

BEFORE THE OFFICE OF CAMPAIGN FINANCE
DISTRICT OF COLUMBIA BOARD OF ELECTIONS AND ETHICS
FRANK D. REEVES MUNICIPAL BUILDING
2000 14TH STREET, N.W. SUITE 420
WASHINGTON, D.C. 20009
(202) 671-0550

IN THE MATTER OF

Dr. Abdusalam Omer
(former) Chief of Staff
Executive Office of the Mayor
District of Columbia

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DATE: October 29, 2002

DOCKET NO.: CF 2002-13

ORDER

Statement of the Case

This matter came before the Office of Campaign Finance (hereinafter OCF) pursuant to a referral from the Office of the Inspector General for the District of Columbia (hereinafter OIG) in a published report entitled "Report of Investigation of the Fundraising Activities of the Executive Office of the Mayor (EOM)" (hereinafter Report) (OIG Control Number 2001-0188 (S)). In the Report, the Inspector General has alleged that Dr. Abdusalam Omer (hereinafter respondent), former Chief of Staff in the Executive Office of the Mayor (hereinafter EOM), engaged in prohibited activity that violated provisions of the District of Columbia Personnel Manual Standards Of Conduct.

Specifically, the OIG has alleged that the respondent was engaged in private or personal business activity on government time and with the use of government resources of behalf of the non-profit Millennium Washington Capital Bicentennial Corporation (MWCBC), and with regard to the Mayor's 2000 Prayer Breakfast and the August 2000 Democratic National Convention (DNC). The OIG has also alleged that, in an effort to secure funding for participation in the Democratic National Convention in August 2000, respondent solicited and received financial assistance from a District entity which conducts business with and is regulated by the District government. Overall, the respondent is alleged to have violated §§1800.1, 1803.1(f), 1803.2(A), and 1804.1(b) and (i) of the District Personnel Manual (hereinafter DPM).¹

¹ DPM §1800.1 reads as follows:

Employees of the District government shall at all times maintain a high level of ethical conduct in connection with

the performance of official duties, and shall refrain from taking, ordering or participating in any official action which would adversely affect the confidence of the public in the integrity of the District government.

DPM §1803.1(f) reads as follows:

An employee shall avoid action, whether or not specifically prohibited by this chapter, which might result in, or create the appearance of the following:

. . .

(f) Affecting adversely the confidence of the public in the integrity of government.

DPM §1803.2(A) reads as follows:

District employees shall not solicit or accept, either directly or through the intercession of others, any gift, gratuity, favor, loan, entertainment, or other like thing of value from a person who singularly or in concert with others:

- (a) Has, or is seeking to obtain, contractual business or financial relations with the D.C. government;
- (b) Conducts operations or activities that are subject to regulation by the D.C. government; or
- (c) Has an interest that may be favorably affected by the performance or non-performance of the employee's official responsibilities.

DPM §1804.1(b) reads as follows:

An employee may not engage in any outside employment or other activity, which is not compatible with the full and proper discharge of his or her duties and responsibilities as a government employee. Activities or actions which are not compatible with government employment include but are not limited to, the following:

. . .

(b) Using government time and resources for other than official business[, and]

. . .

(i) Engaging in any outside employment, private business activity, or other interest which is in violation of federal or District law.

Upon OCF's evaluation of the material amassed in this inquiry, it was decided that the parameters of this inquiry extended solely to the DPM employee conduct regulations. There was not any credible evidence that the respondent committed any violations of the District of Columbia Campaign Finance Reform and Conflict of Interest Act of 1974 (the Act), as amended, D.C. Official Code §§1-1101.01 et seq. (2001 Edition). Any alleged violation of the Act by the respondent would be predicated upon the premises that respondent realized personal gain through official conduct, engaged in any activity subject to the reporting requirements and contribution limitations of the Act, or used District government resources for campaign related activities.² See D.C. Official Code §1-1106.01. Additionally, fines may be assessed for any violation of the Act. OCF's review did not reveal any such activity.

Accordingly, where a violation of the DPM employee conduct regulations has occurred, OCF is limited with respect to any action which otherwise may be ordered. Inasmuch as the DPM consists of personnel regulations, fines cannot be assessed. The Director may only recommend disciplinary action to the person responsible for enforcing the provisions of the employee conduct rules against the respondent.

By letter dated August 15, 2002, OCF requested the appearance of the respondent at a scheduled hearing on August 23, 2002. The purpose of the hearing was to show cause why the respondent should not be found in violation of the Standards of Conduct, which the respondent was alleged to have violated in the OIG Report. Respondent did not appear.

However, on October 23, 2002, respondent telephoned the undersigned to explain that he had been out of the country for at least the past two (2) months, that he was unaware that OCF was investigating the instant matter as it pertained to him, and that he had changed counsel to Jeffrey Robinson, Esq., of Bach, Robinson and Lewis, of Washington, D.C. The undersigned instructed the respondent to inform counsel to formally submit a Notice of Appearance in this matter. Subsequent thereto, counsel telephoned the undersigned and the undersigned repeated her request for a Notice of Appearance in this matter; and queried whether counsel wished to submit a statement for the record in the instant matter. Counsel informed the undersigned that a Notice of Appearance would arrive by October 25, 2002;³ and, due to lack of proper notice to the respondent, he was not able to submit a statement at this time.

Summary of Evidence

The OIG has alleged that the respondent violated the above referenced provisions of

² D.C. Law 14-36, "Campaign Finance Amendment Act of 2001," effective October 13, 2001, prohibits the use of District government resources for campaign related activities.

³ To date, the undersigned has not received a Notice of Appearance from the respondent's current counsel.

the DPM as a result of his participation in MWCBC affairs; and, in his alleged fundraising activities, and those of his former Deputy Chief of Staff for External Affairs, Mark Jones (hereinafter Jones). OIG staff interviewed the respondent on October 2, 2001. At that time, in reply to questions posed by OIG, the respondent stated that he was completely unaware of Jones' actions in raising monies for non-profit organizations and he denied any involvement with any of the funds, for the Mayor's 2000 Prayer Breakfast and transportation and expenses for the 2000 DNC, generated by Jones' fundraising for private non-profit organizations. Respondent admitted, however, that he attempted to pay the driver of the Mayor's mother with a government check.

Consequently, the OIG has alleged that the respondent engaged in activities which were not compatible with the full and proper discharge of his responsibilities as a government official and created the appearance of impropriety. The OIG relies exclusively upon its Report, which is incorporated herein in its entirety.

Findings of Fact

Having reviewed the allegation and the record herein, I find:

1. Respondent, Dr. Abdusalam Omer, the former Chief of Staff in the Executive Office of the Mayor of the District of Columbia, was a public official required to file a Financial Disclosure Statement (hereinafter FDS) with OCF.
2. MWCBC was incorporated in October 1999, under the auspices of Henry S. McCall (hereinafter McCall), then EOM Deputy Chief of Staff for External Affairs, as a private, non-profit corporation to solicit donations for the 2000 millennium celebration in the District of Columbia; and that respondent was aware thereof. Report at 50-51.
3. From November 1999 through the middle of January 2000, MWCBC operated out of the EOM office located at 1 Judiciary Square, 441 4th Street, N.W., Washington, D.C.; and that respondent was aware thereof. Report at 50-51 & 59.
4. From the middle of January through July 2000, MWCBC operated out of 1730 K Street, N.W., and was still supported by D.C. government funds and resources; and that respondent was aware thereof. Report at 59, 62 & 65.
5. Nonetheless, from July through November 2000, MWCBC operated, once again, out of the EOM office located at 1 Judiciary Square, 441 4th Street, N.W., Washington, D.C.; and that respondent was aware thereof. Report at 65 & 67.
6. McCall, Marie Drissel (hereinafter Drissel), and Gregory McCarthy (hereinafter McCarthy), who served as incorporators of MWCBC; Hyong Yi (hereinafter Yi) and Alfonza Fitzgerald (hereinafter Fitzgerald), who processed personal services contracts

for certain employees of MWCBC; Drissel and Elizabeth Berke-Valencia (hereinafter Berke-Valencia), who, in part, managed and wrote checks on behalf of MWCBC; and Lisa Marie Morgan (hereinafter Morgan), who, in part, managed MWCBC accounts, were, as EOM employees, all public officials required to file FDS documents with OCF, and subject to the direction of the respondent, who also monitored MWCBC activities.

7. The Church Association for Community Service (hereinafter CACS) “was founded in 1989 as a collaboration of pastors, ministers and faith-based organizations that combine their resources for the delivery of social services to District residents, particularly on behalf of those who are poor, elderly or disadvantaged[; and] maintains senior citizen and day care centers that are subsidized with District government funds [and became] active in providing affordable housing for the District’s lower income residents.” Report at 76.
8. “CACS is a 501(c)(3) non-profit organization registered to do business in the District and licensed to solicit donations” and is headed by Rev. Frank Tucker, Pastor of the First Baptist Church of Washington, D.C. Id.
9. Jones, an EOM employee required to file FDS documents with OCF, and an employee subject to the direction of respondent, conducted fundraising and management activities on behalf of the non-profit CACS, when he used CACS as the conduit through which he financed mayoral programs, such as the January 2000 Mayor’s Prayer Breakfast, transportation services for the respondent’s mother to attend events on behalf of the respondent, and to sponsor Democratic National Convention (hereinafter DNC) expenses for himself and the respondent.
10. For the Kids Foundation, Inc. (hereinafter FTKF) was a non-profit organization created early in 2000 by Vivian Byrd, then Trade Development Specialist, D.C. Lottery and Charitable Games Control (hereinafter DCLB), and Jones, then DCLB Deputy Director of Operations, designed to develop and implement, under the auspices of the Mayor, civic programs for the benefit of the children of the District of Columbia. Report at 157.
11. At least, from April 2000 through February 2001, Jones conducted the businesses of CACS and FTKF at his government office at 1 Judiciary Square, 441 4th Street, N.W., Washington, D.C. Id.; See In the Matter of Mark Jones, Docket No. PI 2001-101 (November 7, 2001) (hereinafter Matter of Jones).
12. Jones, an EOM employee required to file FDS documents with OCF, and one subject to the direction of respondent, conducted fundraising and management activities on behalf of the non-profit FTKF, of Washington, D.C., when he used FTKF to finance

the 2000 Mayoral Holiday Party for Foster Children. Id.

13. Respondent may not have been aware that Jones was conducting fundraising directly for the non-profits, CACS and FTKF, but, as his supervisor, and, at a minimum, respondent should have inquired into Jones' activities. See Matter of Jones.
14. Mayor Anthony A. Williams eventually fired the respondent because he failed to properly supervise his employees in the manner in which they executed their government responsibilities with regard to MWCBC, CACS and FTKF.

Conclusions of Law

1. Respondent was an employee of the District of Columbia government and was subject to the enforcement provisions of the employee conduct regulations at DPM §§1800 et seq.
2. From October 1999 through November 2000, MWCBC, notwithstanding that it was a private, non-profit corporation, the purpose and proceeds of which inured to the District of Columbia government, was supported by D.C. government employees, funds and resources; and, the respondent believed that MWCBC business was government business.
3. McCall's complete and total management of MWCBC and MWCBC accounts was private, corporate business and conduct, prohibited by the DPM regulations, of which respondent was aware and should not have condoned.
4. The participation by Drissel, McCarthy, Yi, Fitzgerald, Berke-Valencia, and Morgan, in MWCBC affairs, was conduct, prohibited by the DPM regulations, of which respondent was aware, and should not have condoned.
5. From the middle of 1999 through 2001, Jones used District government employees, supplies and times to solicit contributions for CACS and FTKF, private non-profit organizations, to fund mayoral programs and violated the DPM regulations because soliciting funds for a private non-profit organization is not government business; and, as the EOM chief of staff, the respondent should have been aware of Jones' conduct.
6. The responsibility for enforcing the provisions of the employee conduct rules against the respondent would have rested with the Mayor.

Recommendation

Had Dr. Abdusalam Omer remained an employee, it would have been my recommendation that the Director advise the Mayor of the District of Columbia to take disciplinary action against Dr. Abdusalam Omer based upon his violations of the Standards

of Conduct to include a change in his assigned duties, corrective or adverse action, his disqualification for a particular assignment, pursuant to DPM §1801.2, or his removal from District government service.

It should be noted that prior to the issuance of the Report, the Mayor appointed an EOM Ethics Counselor and scheduled meetings and workshops to inform and clarify each staff member as to the provisions and prohibitions of the Standards of Conduct.

Because Dr. Abdusalam Omer is no longer a District government employee, and, because the Mayor of the District of Columbia has taken steps to definitively and thoroughly inform each staff member as to provisions and prohibitions of the Standards of Conduct, I hereby recommend that the Director advise the Mayor to be always cognizant of this responsibility.

Date

Kathy S. Williams
General Counsel

ORDER OF THE DIRECTOR

The circumstances surrounding the instant misconduct involved an employee who believed that his conduct was within the parameters of his job description. But, Dr. Abdusalam Omer is no longer a District government employee, and, the Mayor has taken appropriate measures, by appointing an EOM Ethics Counselor and conducting extensive workshops, to apprise and re-apprise his staff of the provisions and prohibitions of the Standards of Conduct. Thus, the Mayor has taken appropriate measures to ensure the integrity of government. I advise the Mayor to remain ever vigilant in this regard.

This Order may be appealed to the Board of Elections and Ethics within 15 days from issuance.

Date

Cecily E. Collier-Montgomery
Director

Parties Served:

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SERVICE OF ORDER

This is to certify that I have served a true copy of the foregoing Order.

S. Wesley Williams
Investigator

NOTICE

Pursuant to 3 DCMR § 3711.5 (1999), any fine imposed by the Director shall become effective on the 16th day following the issuance of a decision and order, if the respondent does not request an appeal of this matter. If applicable, within 10 days of the effective date of this Order, please make a check or money order payable to the D.C. Treasurer, c/o Office of Campaign Finance, Suite 420, 2000 14th Street, N.W., Washington, D.C. 20009.

cc: Jeffrey Robinson, Esq.
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